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26 UNITED STATES BANKRUPTCY COURT

27 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

28 In re ) **Case No. 19-30089**  
PACIFIC GAS AND ELECTRIC ) **Chapter 11**  
COMPANY, )  
Debtor. )

In re ) **Case No. 19-30088**  
PG&E CORP., ) **Chapter 11**  
Debtor. ) **SONOMA CLEAN POWER AUTHORITY'S**  
**STATEMENT OF SUPPORT FOR DEBTORS'**  
**MOTION FOR POSTPETITION FINANCING**  
**AND RESERVATION OF RIGHTS**  
Date: January 29, 2019  
Time: 1:30 p.m.  
Courtroom: 17  
Place: 450 Golden Gate Ave., 16<sup>th</sup> Floor  
San Francisco, CA 94102  
Judge: Hon. Dennis Montali

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1 Sonoma Clean Power Authority, a California joint powers authority<sup>1</sup> and a “governmental  
2 unit” (as defined in Bankruptcy Code section 101(27)) (“SCPA”), submits this Statement of  
3 Support for the Debtors’ Motion for Postpetition Financing (the “Motion”) and Reservation of  
4 Rights. This Statement is joined by the additional Community Choice Aggregators (“CCAs”) that  
5 are identified above and in the attached signature pages. Separate joinders in separate pleadings  
6 also may be filed by other CCAs and affiliated entities.

7 **I. STATEMENT OF SUPPORT FOR CCA PROTECTIONS, AS DESCRIBED IN**  
8 **EXHIBIT A AND THE MOTION**

9 Representatives of SCPA and Pacific Gas and Electric Company (together with PG&E  
10 Corp., “PG&E” or “Debtor”) have met and conferred prior to this filing regarding Community  
11 Choice Aggregator (“CCA”) requests for certain protections for CCAs in connection with the  
12 Motion, including what is defined herein as “CCA Customer Revenue” (and constituting “public  
13 funds” of SCPA) under “PG&E’s Regulated Tariffs” and other laws and regulations, that will be  
14 carved out and excluded from (a) any rights, security interests or liens the Debtors granted under  
15 their post-petition financing on any property in which Debtors have or claim any legal or equitable  
16 interest, and (b) any authorization to use cash collateral.

17 In response to PG&E’s request, CCAs prepared and proposed a CCA consensus insert in  
18 the form of **Exhibit A** for this court’s approval order. The CCA’s proposal reflects CCA needs  
19 for clarity for CCA lenders, suppliers, and other constituents. CCAs provided a copy of the  
20 language set forth in **Exhibit A** to PG&E.

21 As defined in the Motion, excluded assets are not part of the DIP loan financing collateral.  
22 This Motion properly treats CCA Customer Revenues as excluded assets meaning they are not  
23 part of the DIP lenders’ collateral. (*See*, Docket No. 23 in PG&E Corp.; Docket No. 22 in Pacific  
24 Gas and Electric Utility). PG&E has also expressly acknowledged, including in the Public  
25 Programs Motion, that CCA Revenues are not property of the Debtor’s estate. This is substantially  
26

27 <sup>1</sup> The governmental units that are members of the SCPA joint powers authority are Cloverdale,  
28 Cotati, Petaluma, Santa Rosa, Rohnert Park, Sebastopol, Sonoma, Sonoma County  
(unincorporated areas), Windsor, Fort Bragg, Willits, Point Arena, and Mendocino County  
(unincorporated areas). (Declaration of Geoffrey G. Syphers, ¶ 7.)



1 consistent with the CCA requests for a DIP loan carve-out for CCA Customer Revenues and other  
2 protections, as identified in **Exhibit A**.

3 The CCA protections set forth in **Exhibit A** and the Motion also appear to be consistent  
4 with PG&E's statements to the California Public Utilities Commission ("CPUC") on January 23,  
5 2019<sup>2</sup> and with analysis included in the CPUC's decision adopted at the CPUC's emergency  
6 meeting held on January 28, 2019:

7 PG&E also noted that it acts as a billing agent on behalf of Community  
8 Choice Aggregators (CCA) in its service territory and the revenue it  
9 collects is not part of the assets secured by the DIP financing. The  
10 Commission expects PG&E to continue its obligation to act as a billing  
agent for CCAs, Energy Service Providers, and Core Transport Agents  
consistent with the statements of PG&E at the PHC.<sup>3</sup>

11 For the purpose of this Statement of Support and the accompanying Declaration of  
12 Geoffrey G. Syphers, the following initial definitions shall apply:

13 "CCA Customer Revenue" shall mean charges applied by a CCA to its CCA customers,

14  
15 <sup>2</sup> On January 23, 2019 at the CPUC prehearing conference related to PG&E's request for statutory  
16 exemptions in connection with PG&E's DIP financing, PG&E's counsel Henry Weissmann  
affirmed PG&E's lack of ownership in the CCA Customer Revenue:

17 ALJ COOKE: Did the terms for the DIP spell out what assets are being  
encumbered or used for securitization?

18 MR. WEISSMANN: It is a general statement as is typical in a DIP  
19 Loan. So it's basically assets that are owned by the utility. I do want to  
20 clarify in this regard that it only applies to assets owned by the Utility.  
21 So if there are assets, as there are, which belong to third-parties, those  
22 are not subject to the security interest under the DIP Loan. So for an  
example, there are CCA representatives here. *CCA Revenue is collected  
by the Utility as a billing agent for CCAs. So that money belongs to the  
CCAs and is not part of the security interest that's granted.*

23 Reporter's Transcript ("RT"), 80:4-21, January 23, 2019 Prehearing Conference, "Application of  
24 Pacific Gas and Electric Company to Increase Its Authority to Finance Short-Term Borrowing  
Needs and Procurement Related Collateral Costs by \$2.0 Billion to an Aggregate Amount Not to  
25 Exceed \$6.0 Billion," CPUC Docket No. A.18-10-003 (emphasis added). PG&E's request for  
statutory exemptions in connection with PG&E's DIP financing is also being concurrently  
addressed in CPUC Docket No. A.18-11-001.

26 <sup>3</sup> *Decision Granting Pacific Gas and Electric Company an Exemption From Public Utilities Code*  
27 *Sections 823 and 851 for the Limited Purpose of Debtor-in-Possession Financing*, issued in  
28 CPUC Docket No. A.18-10-003 at 14. (An identical analysis is included in the CPUC's final  
decision issued in CPUC Docket No. A.18-11-001 at p. 15.)

1 which charges are billed and collected by PG&E as the exclusive statutory and regulatory billing  
2 agent/servicer on behalf of a CCA for energy provided by a CCA to serve its customers, whether  
3 pre- or post-petition, and any funds collected and held by PG&E on account of such charges, as  
4 further described in PG&E Electric Rule No. 23, Section Q, Subsections 1, 3 and 4, such CPUC  
5 approved CCA Service Agreements (defined below), and other amounts recoverable from PG&E  
6 by any CCA thereunder, consistent with the rights of each CCA under Section 541(d) of the  
7 Bankruptcy Code and applicable non-bankruptcy law and regulations, including by the CCA  
8 Service Agreements implementing those laws and regulations pursuant to PG&E Regulated  
9 Tariffs.

10 “CCA Service Agreement” shall mean the form agreement (Standard Form 79-1029)  
11 included as part of PG&E’s Regulated Tariffs that applies PG&E’s rules and other tariff  
12 provisions to CCA service as a “force of law” contract.<sup>4</sup> PG&E’s “Electric Sample Form No. 79-  
13

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14 <sup>4</sup> SCPA refers to the CCA Service Agreements, other CPUC approved and required contracts and  
15 CPUC tariffs as “force of law contracts,” because they are distinguished from executory contracts  
16 under Bankruptcy Code § 365 and cannot and should not be rejected by PG&E. PG&E cannot  
17 reject its obligations under laws or regulations, even if they are implemented by CCA contracts  
18 that are required by such tariffs, laws or regulations. *See, e.g., Wah Chang v. Duke Energy*  
19 *Trading & Mktg., LLC*, 507 F.3d 1222 (9th Cir. 2007) (barring retail purchaser from challenging  
20 anticompetitive conduct in wholesale electricity market because rates in purchase contract were  
21 the result of FERC jurisdictional tariff); *In re Calpine Corp.*, 337 B.R. 27, 35 (Bankr. S.D.N.Y.  
22 2006) (dismissing debtor-in-possession’s motions to reject energy contracts because rejection  
23 would directly interfere with FERC jurisdiction and constitute collateral attack on filed rates); *In*  
24 *Re NextWave Pers. Commc’ns, Inc.*, 200 F.3d 43, 55 (2d Cir. 1999), *aff’d*, *FCC v. NextWave Pers.*  
25 *Commc’ns, Inc.*, 537 U.S. 293, 299 (2003) (holding that bankruptcy court has jurisdiction over  
26 those transactions that “do not touch upon” a regulatory agency’s authority); *Garland &*  
27 *LaChance Const. Co., Inc. v. City of Keene*, 144 B.R. 586, 589 (D.N.H. 1991) (rejecting, in  
28 abstention proceeding, debtor’s characterization of stipulation and decree as a mere executory  
contract, instead finding agreement “to be intimately involved in the ongoing exercise of . . .  
regulatory powers”); *In re Friarton Estates Corp.*, 65 B.R. 586 (Bankr. S.D.N.Y. 1986) (finding  
that the right to reject executory contracts pursuant to Bankruptcy Code § 365 did not entitle  
debtor to reject leases to remove rent-controlled tenants and re-let apartments at higher rates)  
(citing *In Re Quanta Resources Corp.*, 739 F.2d 912, 919 (3rd Cir. 1984), *aff’d sub nom*, 474 U.S.  
494 (1986) (stating the main principle behind 28 U.S.C. § 959(b), in that the debtor, in effecting  
its plan during bankruptcy, must comply with all applicable federal, state, and local laws); *In re*  
*Briarcliff*, 15 B.R. 864, 886 (D.N.J. 1981)); *In re St. Mary’s Hospital*, 86 B.R. 393, 398 (Bankr.  
E.D. Pa. 1988) (the city could enjoin debtor’s noncompliance with applicable laws pursuant to 28  
U.S.C. § 959); *In re Garden Manor Associates*, 70 B.R. 477 (Bankr. N.D. Cal. 1987) (allowing  
enforcement by HUD of its Regulatory Agreement, implementing its statutory and regulatory  
authority, because it was more than a private contract, as protecting the governmental policies at  
issue).

1029,” states:

1.2 The form of this Agreement has been developed as part of the CPUC regulatory process to implement Assembly Bill 117, was intended to conform to CPUC directions, was filed and approved by the CPUC for use between PG&E and CCAs and may not be waived, altered, amended or modified, except as provided herein or in the applicable community choice aggregation tariff, or as may otherwise be authorized by the CPUC.

The CCA Service Agreement, based on the sample form, is required to conform to CPUC

Although CCA issues are distinguishable in some ways from those that are currently the subject of FERC proceedings and court decisions regarding the bankruptcy rejection of FERC filed rate power contracts, FERC and other authorities have also supported force of law arguments like those advanced by CCAs here. CCAs direct this court’s attention to the very recent FERC decision in the *NextEra Energy, Inc. v. Pacific Gas & Electric Co.*, 166 FERC ¶ 61,049 (1/25/19) (“We conclude that this Commission and the bankruptcy courts have concurrent jurisdiction to review and address the disposition of wholesale power contracts sought to be rejected through bankruptcy.”). In that decision FERC considered all the arguments of the parties and noted the “unsettled state of the law” by contrasting *In the Matter of Mirant Corp.*, 378 F.3d 511 (5th Cir. 2004) and *FirstEnergy Solutions Corp. v FERC*, 2018 WL 2315916 (Bankr. N.D. Ohio May 18, 2018) (now on appeal in the Sixth Circuit, Case Nos. 18-3787, 18-3788, 18-4095, 18-4097, 18-4107, 18-4110) with *In re Calpine Corp.*, 337 B.R. 27 (S.D.N.Y. 2006) and *In re Bos. Generating, LLC*, No. 10 Civ. 6258, 2010 WL 4616243 (S.D.N.Y. Nov. 12, 2010). CCAs reserve the issue today, given the specific nature of the relief requested by CCAs herein, since SCPA and other CCAs’ ownership of the CCA Customer Revenue does not depend on the CCA Service Agreements, but instead arises from applicable law and regulations that create a whole regulated industry that must endure and compel compliance regardless of the fate of the contracts that implement and embody such laws and regulations (e.g., AB 117 (2002), SB 790 (2011), Rule 23). Among other things, even if those CCA contracts somehow could be rejected in theory, that would still result in PG&E causing a statutory breach of the contract, while still being fully obligated and accountable, in accordance with 28 U.S.C. § 959(b) and otherwise under the laws and regulations implemented in part through CCA contracts. See 28 U.S.C. § 959(b); *Midlantic Nat’l Bank v. New Jersey Dept. of Envtl. Prot.*, 474 U.S. 494, 505-507, 106 S.Ct. 755, 761-762 (1986) (holding trustee may not abandon property in violation of state environmental laws); see also *In re Megafoods Stores, Inc.*, 163 F.3d 1063, 1069 (9th Cir. 1998) (discussing how debtors in bankruptcy are subject to state tax laws).

CPUC-approved CCA Service Agreements are part of tariffs and equivalent to the “filed rate” that cannot be rejected or modified. See, e.g., *In re Calpine Corp.*, *supra*, 337 B.R. 27 and our recollection of Judge Montali’s tentative ruling in the Qualifying Facilities (“QF”) contract disputes in the previous PG&E Chapter 11. Not only would PG&E have failed to escape its burden by rejecting the contract, but it would be worse off, i.e., both (i) subject to the legal, regulatory, and political consequences of noncompliance with the laws and regulations that remain applicable despite rejection, and (ii) liable for damages under Sections 365(g) and 502(g) and under some circumstances administrative claims and other consequences for post-petition wrongdoing, especially if there were any conversion of CCA public funds. Moreover, even if the business judgment standard were applied to PG&E’s decision (as opposed to the heightened standard of *In re Mirant Corp.*, *supra*, 378 F.3d at 524-525), there is no rational basis for trying to reject such a force of law contract and tariff, especially if PG&E is solvent and still must comply with the laws and regulations that continue to empower the CCAs and obligate PG&E. See *In re Chi-Feng Huang*, 23 B.R. 789 (B.A.P. 9th Cir. 1983) (denying windfalls to equity holders from rejecting executory contracts in Chapter 11 cases where creditors are paid in full).

1 decisions, contain required elements, and is filed with proposed tariffs. CCAs are required to have  
2 the Service Agreement in place and include it with their registration with the CPUC. The specific  
3 CCA Service Agreement applicable to SCPA was approved by the CPUC in Resolution E-4624  
4 on November 14, 2013, as a PG&E Regulated Tariff. (Declaration of Geoffrey G. Syphers, ¶ 17.)

5 “PG&E’s Regulated Tariffs” shall mean electric service tariff provisions that have been  
6 approved and made enforceable by the CPUC, as regulator over PG&E’s operations, and therefore  
7 have the force of law<sup>5</sup> with respect to CCA Customer Revenue, including but not limited to PG&E  
8 Electric Rule No. 23 (also known as “Rule 23”), Section Q, Subsections 1, 3 and 4, as applied to  
9 PG&E pursuant to the CCA Service Agreement, consistent with the rights of a CCA under Section  
10 541(d) of the Bankruptcy Code and applicable non-bankruptcy law and regulations. The CPUC’s  
11 General Order (“GO”) 96-B describes “tariffs” as the following:

12 3.15 Tariffs

13 "Tariffs" refer collectively to the sheets that a utility must file, maintain,  
14 and publish as directed by the Commission, and that set forth the terms  
15 and conditions of the utility's services to its customers; "tariffs" may also  
refer to the individual rates, tolls, rentals, charges, classifications, special  
conditions, and rules of a utility.

16 Similar to that limited interest claimed by a mortgage servicer as referenced in Bankruptcy  
17 Code section 541(d), there clearly is no equitable or beneficial interest of PG&E in CCA

18  
19 <sup>5</sup> Several California opinions have concluded that utility tariffs when approved by the CPUC have  
the force of law:

20 Section 489, subdivision (a), requires every public utility to file with the  
21 PUC a tariff—a schedule “showing all rates, tolls, rentals, charges,  
22 and classifications ... together with all rules, contracts, privileges, and  
23 facilities which in any manner affect or relate to rates, tolls, rentals,  
24 classifications, or service.” *Such a tariff, when approved by the PUC,*  
*has the force of law.* (Trammell v. Western Union Tel. Co. (1976) 57  
25 Cal.App.3d 538, 549–550, 129 Cal.Rptr. 361.) Only by following  
procedures specified in or developed under section 454 may the utility  
then change its published tariff. *Wood v. Public Utilities*  
*Commission* (1971) 4 Cal.3d 288, 292–293, 93 Cal.Rptr. 455, 481 P.2d  
823

26 *Pacific Bell v. Public Utilities Com'n* 79 Cal.App.4th 269, 273–274 (2000) (emphasis added.); *see*  
27 *also Southern California Edison Co. v. City of Victorville*, 217 Cal.App.4th 218, 228 (2013); *see*  
28 *also Tesoro Refining & Marketing Company LLC v. Pacific Gas and Electric Company*, 146  
F.Supp.3d 1170, 1182 (N.D. Cal. 2015) (acknowledging tariffs approved by the CPUC have the  
force of law).



1 Customer Revenue for reasons stated herein. PG&E repeatedly acknowledges this fact. For  
2 example, PG&E provides the following response on its website to a frequently asked question:  
3 How will I be billed for CCA service?

4 Customers who receive their electric supply from a CCA receive a  
5 consolidated bill issued by PG&E that includes charges from both parties.  
6 This is not a double bill or charge. *PG&E collects payments on behalf of*  
7 *the CCA*, and these payments are then sent to the CCA.

8 [https://www.pge.com/en\\_US/residential/customer-service/other-services/alternative-energy-](https://www.pge.com/en_US/residential/customer-service/other-services/alternative-energy-providers/community-choice-aggregation/faq.page)  
9 [providers/community-choice-aggregation/faq.page](https://www.pge.com/en_US/residential/customer-service/other-services/alternative-energy-providers/community-choice-aggregation/faq.page), last visited on January 17, 2019 (emphasis  
10 added).

11 PG&E has further proposed CCA protections in the Motion to continue to timely remit the  
12 CCA Customer Revenue to SCPA and other CCAs in the ordinary course of business consistent  
13 with applicable state law, PG&E's Regulated Tariffs and other laws, regulations and tariffs.<sup>6</sup> In  
14 addition, the CCAs are requesting similar protections in connection with PG&E's Public Programs  
15 Motion to allow for CCA Customer Revenue to continue being timely remitted to SCPA and other  
16 CCAs in the ordinary course of business. See SCPA's Statement of Support for Debtor's Public  
17 Programs Motion and Reservation of Rights, which is substantially similar to this Statement and  
18 filed contemporaneously herewith.

19 Based on the CCA protections proposed in **Exhibit A** and the Motion, and SCPA's hopes  
20 for further progress in its constructive discussions with PG&E over remaining issues, SCPA  
21 supports the Motion, requesting inclusion of CCA protections in the Court's order, while reserving  
22 all other rights and interests as provided in **Exhibit B**. SCPA consents to entry of the final order  
23 on the Motion by the bankruptcy judge as to such **Exhibit A** protections for CCAs, to the extent  
24 that can be done without prejudice to the generally reserved *Stern*<sup>7</sup> and related objections for other  
25 disputes and matters, as described in **Exhibit B**. The comprehensive rights, governmental powers,

26 <sup>6</sup> In the context of the Motion, PG&E refers to these funds and remittances as TPP Funds and TPP  
27 Costs, with the former pertaining to collected amounts from Customers and the latter pertaining to  
28 remittances to, among others, the CCAs. SCPA believes that these terms include what SCPA has  
described as CCA Customer Revenues, and are part of PG&E's Customer Program Obligations  
(see pp. 12 and 26 of the Public Programs Motion).

<sup>7</sup> *Stern v. Marshall*, 564 U.S. 462 (2011).

1 claims, and interests of SCPA and other CCAs, fully reserved, are beyond the scope of this filing,  
2 but are more complex than usual for this topic, considering (i) the regulated nature of PG&E by  
3 the CPUC and the Federal Energy Regulatory Commission ("FERC"), (ii) the California statutory  
4 and regulatory regime imposed on PG&E still applicable under 28 U.S.C. § 959(b), and (iii) the  
5 governmental unit character of SCPA and other CCAs with special protections under Senate Bill  
6 ("SB") 790 (2011) and Rule 23. The regulatory power of the CPUC also has the force of law.

7 The PUC adopted its Rules of Practice and Procedure pursuant to its rulemaking  
8 authority (Cal. Const., art. XII, § 2; Pub. Util.Code, § 701). A regulation  
9 adopted by an administrative agency under its rulemaking authority has the  
force and effect of law. (Citations omitted.)

10 *Southern California Edison Co. v. Public Utilities Com'n.*, 140 Cal.App.4th 1085, 1092 (2006).

11 Contrary to defendant's contention the statutes and rules of the commission do  
12 impose a direct and positive duty on the operator of a utility. This is evident  
13 from the regulations heretofore quoted. The rules were promulgated for the  
14 safety of workmen as well as the public and civil penalties are imposed on the  
15 utility for failure to comply with them and criminal penalties are imposed on the  
officers and employees of the utility. Utilities may not operate except by  
permission of the commission which imposes the duties heretofore set forth  
together with other regulations pertinent to the operation of such organizations.

16 *Snyder v. Southern Cal. Edison Co.*, 44 Cal.2d 793, 801 (1955).

## 17 **II. THE CCAS' PURPOSE AND THEIR RELATIONSHIP WITH PG&E**

### 18 **A. CCAS ARE LOAD SERVING GOVERNMENTAL UNITS WHOSE CCA** 19 **CUSTOMER REVENUE IS BILLED AND COLLECTED BY PG&E AS** 20 **AGENT AND REMITTED TO THE CCA UNDER OBLIGATIONS** 21 **IMPOSED BY STATUTE, REGULATION AND CPUC-APPROVED** 22 **CONTRACT AGREEMENTS AND TARIFFS.**

23 SCPA is a CCA, established pursuant to Assembly Bill ("AB") 117 adopted in 2002,  
24 following the 2001-2002 California Energy Crisis. In response to the California Energy Crisis, the  
25 California Legislature created CCAs as an alternative, and an exception, to the investor-owned  
26 utility ("IOUs") monopoly over electricity sales to customers. The specific, distinct and important  
27 role of CCAs as an IOU alternative in California's energy markets and renewable energy future  
28 and the requirement that IOUs co-exist alongside CCAs was further reinforced with passage by

1 the California Legislature of SB 790 in 2011.<sup>8</sup>

2 CCA programs are delivered to CCA customers by governmental units enabled under  
3 California law to purchase and aggregate energy on behalf of their community members. CCA  
4 programs are administered by local governments (at present as joint power authorities created by  
5 various cities and counties, such as SCPA, or as an enterprise fund within a single city or county)  
6 with a mission to provide competitive clean energy alternatives to IOU sources, such as PG&E.  
7 When a city, county or joint powers agency implements or joins a CCA program, all PG&E  
8 residential customers within the CCA program's service area automatically become customers of  
9 the CCA, unless they choose to opt out. CCAs provide reliable service, a power mix with more  
10 renewable and/or greenhouse gas-free energy than required by law at competitive rates,  
11 and innovative programs that benefit people, the environment, and the economy in communities in  
12 PG&E's territory and across California. (Declaration of Geoffrey G. Syphers, ¶¶ 8, 9, 12.)

13 Statewide, 19 CCAs, including SCPA, independently procure energy and provide a wide  
14 array of services directly to over **8 million CCA customers (more than 2.5 million customer**  
15 **accounts)**. CCAs are an essential and growing part of the State's clean energy mandates. In the  
16 PG&E territory, approximately **41%** of the load will be served by CCAs in 2019, absent any  
17 disruption by this case which SCPA is constructively working with PG&E to avoid. As of August  
18 2018, the 11 Northern California CCAs in PG&E territory have executed contracts totaling **1,239**  
19 **megawatts ("MW") of renewable energy from new California facilities** with commercial  
20 operation dates between 2018 and 2021. (Declaration of Geoffrey G. Syphers, ¶¶ 25-26.)

21 Pursuant to applicable state law, PG&E's Regulated Tariffs and other laws, regulations and  
22 tariffs, PG&E is mandated to provide both (i) transmission and distribution services to deliver  
23 energy procured by CCAs for their customers, as well as (ii) billing and collection services for  
24 CCAs' benefit as to CCA customers using CCA energy. CCA customers receive their energy from

25  
26 <sup>8</sup> See, e.g., SB 790; Sec. 2(d) ("The Public Utilities Commission has found that conduct by  
27 electrical corporations to oppose community choice aggregation programs has had the effect of  
28 causing community choice aggregation programs to be abandoned.") and Sec. 2(g) ("California  
has a substantial governmental interest in ensuring that conduct by electrical corporations does not  
threaten the consideration, development, and implementation of community choice aggregation  
programs").

1 the CCA rather than the IOU, unless they opt out. As a result, CCAs are load-serving  
2 governmental units responsible for securing sufficient electricity supplies to meet the needs of  
3 their customers. (Declaration of Geoffrey G. Syphers, ¶¶ 27, 28.)

4 The CCAs are mandated by state law to use the IOUs, like PG&E, as their exclusive  
5 billing and collection agents. There is no provision for a “back-up” billing and collection agent –  
6 the CCAs have no choice other than the IOUs.

7 Expansion of CCA programs did not change the consolidated billing practices of the IOUs.  
8 The bills sent by PG&E to CCA customers break out CCA charges from PG&E’s own charges, so  
9 that CCA customers always know how much they are paying to their CCA for energy. However,  
10 the separate CCA charges and PG&E charges still are delivered through a single, consolidated bill.  
11 (Declaration of Geoffrey G. Syphers, ¶ 18.)

12 In light of this consolidated billing arrangement, disruption of CCA Customer Revenue  
13 timely being paid to CCAs would materially interfere with energy supplies, causing serious  
14 adverse consequences. SCPA alone received \$173.1 million in 2018 revenue from more than  
15 223,000 CCA customers, all of which was CCA Customer Revenue. (Declaration of Geoffrey G.  
16 Syphers, ¶ 13.)

17 **B. PG&E HAS NO OWNERSHIP OR BENEFICIAL INTEREST IN THE CCA**  
18 **CUSTOMER REVENUE.**

19 As further described below, in fulfilling its statutorily and regulatorily mandated billing  
20 and collection agent role for CCAs, PG&E functions like the mortgage servicer referenced in  
21 Bankruptcy Code section 541(d), except that CCAs’ ownership of those public funds is not just  
22 protected by PG&E’s Regulated Tariffs, including the CPUC-approved force of law CCA Service  
23 Agreements, and other laws, regulations and tariffs, but also directly by the obligation of PG&E as  
24 a chapter 11 debtor in possession to abide by those laws, regulations and tariffs under 28 U.S.C. §  
25 959(b) and otherwise, consistent with its fiduciary duties to CCAs.

26 Again, as noted above, PG&E’s lack of ownership of the CCA Customer Revenue and its  
27 billing service responsibility has been recently confirmed in the CPUC’s decision adopted at the  
28 CPUC’s emergency meeting held on January 28, 2019:



1 PG&E also noted that it acts as a billing agent on behalf of Community  
2 Choice Aggregators (CCA) in its service territory and the revenue it  
3 collects is not part of the assets secured by the DIP financing. The  
4 Commission expects PG&E to continue its obligation to act as a billing  
agent for CCAs, Energy Service Providers, and Core Transport Agents  
consistent with the statements of PG&E and the PHC.

5 See footnote 3, *supra*. Likewise, PG&E's own documents regarding the fees associated with  
6 consolidated billing on behalf of CCAs repeatedly delineate between fees owing to PG&E and  
7 fees owing to CCAs.<sup>9</sup>

8  
9 <sup>9</sup> PG&E's own documents supporting CCAs' position include:

- 10 (a) *Electric Schedule E-CCA Services to Community Choice Aggregators*: In  
11 laying out the fees associated with consolidated billing, PG&E provided the  
following description of services:

12 Composite Bill-Ready Billing Fee

13 This fee covers the cost to present the CCA's energy and customer  
14 charges. It also includes cost to process the CCA's energy charges and  
customer payments.

15 ....

Composite Rate-Ready Billing Fee

16 This fee covers the cost to present the CCA's energy and customer  
17 charges on an additional bill page. It also includes cost to process the  
CCA's energy charges and customer payments, and respond to CCA  
18 calls regarding billing issues. (Section 7, a. & 8, a.)

- 19 (b) *Electric Rule 23 Community Choice Aggregation Service*

20 Section P. Billing Service Obligations:

- 21 (a) Description

22 PG&E shall provide two options for Consolidated PG&E Billing:

23 (1) Rate Ready – The customer's CCA shall send its rates to PG&E.  
PG&E shall in turn send a consolidated bill, containing both PG&E  
and CCA charges to the customer.

24 (2) Bill Ready – The customer's CCA shall send its bill to PG&E.  
25 PG&E shall in turn send a consolidated bill, containing both PG&E  
and CCA charges, to the customer.

26 2. Billing Information and Inserts

- 27 (a) Identify PG&E and CCA Charges  
28

1 The normal and uninterrupted billing of customers and remittance of CCA Customer  
2 Revenue through PG&E to CCAs (as CCA owned proceeds and public funds) is of the *utmost*  
3 importance in order for CCAs to meet their own obligations to their customers, suppliers,  
4 contractors, and lenders. This is critical, because, as described above, PG&E is identified in the  
5 statute as the *exclusive billing agent*, and CCAs presently have *no option to utilize another billing*  
6 *agent* for their billing and collection. Any interruption in this billing process would have serious  
7 adverse consequences for all parties and create significant risk and volatility to the State's energy  
8 market.

9  
10 The consolidated PG&E bill, at a minimum, shall identify utility  
11 charges as specified by the Commission or its codes and when CCA  
12 charges are received shall identify, at a minimum, two sets of  
charges: *one for PG&E services and another for CCA energy*  
*services.*

13 Section Q. Payment and Collection Terms

- 14 1. PG&E shall pay the CCA the amounts paid to the utility for CCA  
15 charges only after the payment is received from the customer.  
16 Payments shall be transferred to the CCA electronically specifying  
the amount paid by each specific customer account or group of  
customer accounts if the customer is Summary Billed.
- 17 2. ...
- 18 3. PG&E shall remit payments to the CCA only for the amounts paid  
19 by the CCA customer for payment of CCA charges. Payments are  
due on or before the later of:
- 20 (a) Seventeen (17) calendar days after the bill was rendered to the  
customer, or
- 21 (b) The next business day after the payment is received from the  
22 customer.
- 23 4. PG&E shall process payments, post utility charges paid to customer  
24 accounts, and transfer funds owed the CCA to the CCA. PG&E shall  
25 debit to the CCA any amounts resulting from returned payments and  
assess returned payment charges (i.e., a charge for each returned  
payment) to the appropriate customers.
- 26 5. ...
- 27 6. The customer is obligated to pay PG&E for all utility and CCA  
28 charges consistent with existing tariffs.

1 The CCA protections proposed in **Exhibit A** and the Motion is what is expected of PG&E  
2 under CCA Service Agreements, applicable state law, PG&E's Regulated Tariffs and other laws,  
3 regulations and tariffs. SCPA appreciates that PG&E acknowledges its role as collecting  
4 "payments on behalf of the CCA." *See* footnote 2, *supra*. However, additional assurances in the  
5 early stages of this Chapter 11 case, such as those in **Exhibit A**, are necessary and appropriate to  
6 avoid conflicts with DIP lenders or others who might misunderstand the situation, resulting in  
7 adverse consequences for all parties in interest in the event of any noncompliance by PG&E or  
8 any DIP lenders' interference with CCAs' public funds through any overbroad DIP Loan  
9 arrangements.

### 10 **III. SCPA'S REBUTTALS TO ANY OPPOSITION TO THE PROPOSED PG&E** 11 **ACCOMMODATIONS TO CCAS.**

12 Because these issues are raised in First Day Motions, where it is not possible to anticipate  
13 all oppositions to the proposed CCA protections in **Exhibit A** and the Motion, SCPA offers these  
14 comments to dispel any unfounded concerns or objections that may be raised at the hearing,  
15 particularly by creditors who do not understand how CCAs operate and their importance in the  
16 California energy system. SCPA welcomes the opportunity to explain why the CCA protections in  
17 **Exhibit A** and the Motion is necessary and in the best interest of all parties-in-interest. Any battle  
18 with any other party-in-interest over CCA Customer Revenue or other rights, assets or claims  
19 would have serious adverse effects on the Chapter 11 estate and the provision of electricity within  
20 the territory of PG&E. That is why PG&E is now doing the right thing, consistent with its  
21 fiduciary duties as a debtor in possession and its stated statutory, regulatory and tariff duties to  
22 CCAs.

23 As set forth in footnote 4, *supra*, the relief described in **Exhibit A** and the Motion is  
24 necessary to ensure PG&E continues, as required by 28 U.S.C. §959(b) to comply with applicable  
25 law, regulations, and tariffs. It does not expand the rights of CCAs. *See, e.g.*, 11 U.S.C. § 541(d);  
26 H.R. REP. 95-595, 368, 1978 U.S.C.C.A.N. 5963, 6324; PG&E Electric Rule No. 23 (especially  
27 Section Q); *In re Columbia Gas Systems Inc.*, 997 F.2d 1039, 1061 (3d Cir. 1993) (where refunds  
28 were being provided from gas suppliers through a utility to customers, and where a party acts as a

1 “mere conduit” for funds, such party does not hold an equitable interest). Cases in the Northern  
2 District of California have also found a “resulting” trust in similar situations. *See, e.g., Aikin v.*  
3 *Neilson (In re Cedar Funding, Inc.)*, No. C 09-4311 RMW, 2012 WL 1110023, at \*4 (N.D. Cal.  
4 Mar. 31, 2012); *In re Guy F. Atkinson & Co.*, No. C 98-4577 SL, 2000 WL 52317, at \*1 (N. D.  
5 Cal. Jan. 18, 2000) (concerning partial summary judgment granted by Judge Carlson imposing a  
6 resulting trust in favor of Yale University for funds transferred to a division of Debtor that were  
7 commingled in the Debtor’s contractor deposit account and claimed by bank as collateral under its  
8 security agreement with Debtor.)

9 No one should interfere with PG&E performing for CCAs its fiduciary duties as described  
10 in *In re Cochise College Park, Inc.*, 703 F.2d 1339, 1356-57 (9<sup>th</sup> Cir. 1983) and other precedents,  
11 especially as to governmental units the Legislature has directed to operate on par with PG&E.  
12 Wisely, PG&E is mindful of the need for cooperation in timely doing the right thing to maintain  
13 the ordinary course of business and the *status quo* and accommodate SCPA and the other CCAs in  
14 promptly resolving these issues.

15 Clearly, choosing to comply with its existing obligations under applicable laws and  
16 regulations is a valid exercise of PG&E’s business judgment. Such an exercise of its business  
17 judgment is particularly appropriate in light of the fact that PG&E is heavily regulated by the State  
18 of California, which has enhanced CCA protections in recognition of the need to protect CCAs in  
19 order to further the State’s renewable energy and greenhouse gas reduction goals. The legislative  
20 findings in support of the enhanced protections for CCAs in SB 790 include the following  
21 illustrations and more:<sup>10</sup>

22  
23 <sup>10</sup> Also note the following CPUC Decisions:

24 *D.05-12-04*. In discussing “Customer Deposits, Partial Payments and Termination Service”  
25 the CPUC determined that IOUs and CCAs should collect their own deposits. The CPUC stated  
the following:

26 We adopt the utilities’ proposal that each entity collect its own deposits  
27 (although the CCA may collect the deposits using the utility’s billing services).  
While this policy may require some customers to pay two deposits, we have  
consistently treated CCAs as stand-alone operations with ratemaking discretion.

28 (p. 42.)

1 SEC. 2. The Legislature finds and declares all of the following:

2 (a) It is the policy of the state to provide for the consideration, formation, and  
3 implementation of community choice aggregation programs authorized in Section  
4 366.2 of the Public Utilities Code.

5 (b) Since community choice aggregation programs were first authorized in 2002,  
6 only one community choice aggregation program has been implemented.

7 (c) Electrical corporations [e.g., PG&E] have inherent market power derived from,  
8 among other things, name recognition among customers, longstanding  
9 relationships with customers, joint control over regulated operations and  
10 competitive generation services, access to competitive customer information, and  
11 the potential to cross-subsidize competitive generation services.

12 (d) The Public Utilities Commission has found that conduct by electrical  
13 corporations to oppose community choice aggregation programs has had the effect  
14 of causing community choice aggregation programs to be abandoned.

15 (e) The Public Utilities Commission has made considerable progress in identifying  
16 and addressing the conduct that has hindered the creation of community choice  
17 aggregation programs, and it is now appropriate to further address these issues in  
18 statute.

19 (f) The exercise of market power by electrical corporations [e.g., PG&E] is a  
20 deterrent to the consideration, development, and implementation of community  
21 choice aggregation programs.

22 (g) California has a substantial governmental interest in ensuring that conduct by  
23 electrical corporations does not threaten the consideration, development, and  
24 implementation of community choice aggregation programs.

25 (h) It is therefore necessary to establish a code of conduct, associated rules, and  
26 enforcement procedures, applicable to electrical corporations [e.g., PG&E] in

27 *D.04-12-046.* "SCE and SDG&E state they will have incremental billing costs because  
28 they will have to receive usage and other information from the CCA, then bill the customer on a  
separate page from the utility's bill, then remit the payments to the CCA." (p. 16-17.) The CPUC  
then determined that incremental billing costs should be allocated to the CCAs, and that the IOUs'  
billing processing fees should be unbundled.

*D.15-09-013.* As a CCA, LCE will offer generation procurement service to its residents  
and businesses while SCE will continue to provide transmission and distribution service to those  
customers plus metering, billing and other services on behalf of LCE. These metering, billing and  
other services are detailed in SCE's principal CCA fee schedule, tariff Schedule CCA-SF  
(Community Choice Aggregation Service Fees). (p. 1.)



1 order to facilitate the consideration, development, and implementation of  
2 community choice aggregation programs, to foster fair competition, and to protect  
against cross-subsidization by ratepayers.

3 (brackets added.)

4 Public Utilities Code, 366.2(a)(9) states in part:

5 ... Electrical corporations [e.g., PG&E] shall continue to provide all metering,  
6 *billing*, collection, and customer service to retail customers that participate in  
community choice aggregation programs. *Bills sent by the electrical corporation*  
7 *to retail customers shall identify the community choice aggregator as providing*  
8 *the electrical energy component of the bill.* The commission shall determine the  
terms and conditions under which the electrical corporation [e.g., PG&E] provides  
9 services to community choice aggregators and retail customers.

10 (brackets and italics added). Consider also the *Legislative History for Public Utilities Code, 366.2*:

11 COMMENTS: Community aggregation is direct access on a large scale, similar to  
formation of a municipal utility, except that a municipal utility is self-governing,  
12 must purchase power or build plants and transmission lines, assume responsibility  
for distribution, billing, and meter-reading. Under aggregation, most of the  
13 responsibilities remain with the electrical corporation. The aggregator procures  
electricity on the wholesale market, to be delivered through the electrical  
14 corporation's infrastructure. Under this bill the CPUC would oversee and sanction  
these transactions.<sup>11</sup>

16 In the view of SCPA and its allied CCAs, the foregoing statements demonstrate that the  
17 CCA protections in **Exhibit A** and the Motion are what is required by law. SCPA and its allied  
18 CCAs simply will obtain undisturbed and continuous collection and remittance of CCA Customer  
19 Revenue from CCA energy deliveries, program, service and other offerings for CCA customers in  
20 accordance with CCA Service Agreements, applicable state law, PG&E's Regulated Tariffs and  
21 other laws, regulations and tariffs, free from any claim of lien or security interest thereon by the  
22 DIP Lenders.

23 Accordingly, CCA protections are consistent with both the ownership interests of SCPA  
24 and its allied CCAs under Section 541(d) and the obligations of PG&E to comply with applicable  
25 law under 28 U.S.C. § 959(b), and to fulfill its assurances to the CPUC cited above concerning the

26  
27 <sup>11</sup> See California Bill Analysis, A.B. 117 Assembly Floor (1/09/2002). Other bill summaries  
describe a CCA as a "purchasing agent" on behalf of its residents. See California Bill Analysis,  
28 A.B. 117 Senate Rules Committee (8/27/2002).

1 CCA Customer Revenue.

2 DATED: January 29, 2019.

RESPECTFULLY SUBMITTED,

3 ENGEL LAW, P.C.

4 By: /s/ G. Larry Engel  
5 G. Larry Engel

6 -and-

7 BOUTIN JONES INC.  
Mark Gorton

8 -and-

9 SONOMA CLEAN POWER AUTHORITY  
10 Jessica R. Mullan, General Counsel

11 *Attorneys for Creditor and Party-in-Interest,*  
12 *SONOMA CLEAN POWER AUTHORITY*

13  
14 *Additional CCAs joining this Statement and the signatures of their counsel are on the following*  
15 *pages.*

1 City and County of San Francisco, on behalf of CleanPowerSF, a program of the San  
2 Francisco Public Utilities Commission, a "governmental unit" (as defined in Bankruptcy Code  
3 section 101), joins the Statement of Support for the Debtors' Motion for Postpetition Financing and  
4 Reservation of Rights.

5 DATED: January \_\_\_, 2019.

RESPECTFULLY SUBMITTED,

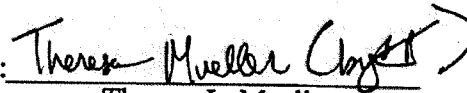
DENNIS J. HERRERA

City Attorney

THERESA L. MUELLER

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14 By:   
15 Theresa L. Mueller

Attorneys for Creditor and Party-in-Interest  
CITY AND COUNTY OF SAN FRANCISCO on behalf  
of CLEANPOWERSF and SAN FRANCISCO PUBLIC  
UTILITIES COMMISSION



1        *EAST BAY COMMUNITY ENERGY, a Joint Powers Authority* and a “governmental unit” (as  
2 defined in Bankruptcy Code section 101), joins this Statement of Support and Reservation of Rights.

3 DATED: January 27, 2019.

RESPECTFULLY SUBMITTED,

4  
5 EAST BAY COMMUNITY ENERGY  
Leah S. Goldberg, General Counsel

6  
7 By: 

8 Leah S. Goldberg  
General Counsel

9  
10 *Attorneys for Creditor, EAST BAY COMMUNITY*  
11 *ENERGY AUTHORITY*  
12  
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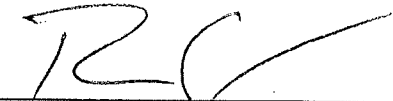
SONOMA CLEAN POWER'S STATEMENT OF SUPPORT  
AND RESERVATION OF RIGHTS

*City of San José*, a California Charter City (San José Clean Energy), and a “governmental unit” (as defined in Bankruptcy Code section 101), joins this Statement of Support and Reservation of Rights.

DATED: January 28, 2019.

Very truly yours,

City of San José

  
\_\_\_\_\_  
RICHARD DOYLE  
City Attorney

*Attorneys for Creditor and Party-in-Interest  
City of San José*


SONOMA CLEAN POWER'S STATEMENT OF SUPPORT  
AND RESERVATION OF RIGHTS

1 Silicon Valley Clean Energy Authority, a California joint powers authority and a  
2 "governmental unit" (as defined in Bankruptcy Code section 101), joins this Statement of Support  
3 and Reservation of Rights.

4 DATED: January \_\_\_\_, 2019.

RESPECTFULLY SUBMITTED,

5  
6 SILICON VALLEY CLEAN ENERGY AUTHORITY  
T. Peter Pierce, Assistant General Counsel

7  
8 By:   
T. Peter Pierce  
Assistant General Counsel

9  
10 *Attorneys for Creditor, SILICON CLEAN ENERGY*  
11 *AUTHORITY*  
12  
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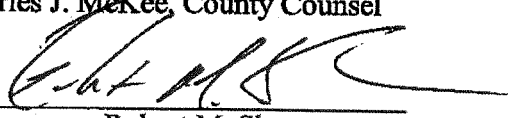
SONOMA CLEAN POWER'S STATEMENT OF SUPPORT  
AND RESERVATION OF RIGHTS

1 Monterey Bay Community Power Authority, a California joint powers authority<sup>1</sup> and a  
2 "governmental unit" (as defined in Bankruptcy Code section 101), joins this Statement of Support  
3 and Reservation of Rights.

4 DATED: January 28, 2019.

RESPECTFULLY SUBMITTED,

5  
6 COUNTY OF MONTEREY  
Charles J. McKee, County Counsel

7  
8 By:   
9 Robert M. Shaw  
Deputy County Counsel

10 Attorneys for Creditor, MONTEREY BAY  
COMMUNITY POWER AUTHORITY  
11  
12  
13  
14  
15  
16  
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24

25  
26 <sup>1</sup> The governmental units that are members of Monterey Community Power Authority joint powers  
27 agreement are the cities of Santa Cruz, Watsonville, Capitola, Scotts Valley, Salinas, Monterey,  
28 Pacific Grove, Carmel, Seaside, Marina, Sand City, Soledad, Greenfield, Gonzales, Hollister, San  
Juan Bautista, San Luis Obispo, Morro Bay, and the unincorporated areas of Monterey, Santa Cruz  
and, San Benito Counties

1 Valley Clean Energy Alliance, a California joint powers authority<sup>1</sup> and a "governmental  
2 unit" (as defined in Bankruptcy Code section 101), joins this Statement of Support and Reservation  
3 of Rights.

4 DATED: January 29, 2019.

RESPECTFULLY SUBMITTED,

BEST BEST & KRIEGER LLP

By: 

Harriet A. Steiner

*Attorneys for Creditor, VALLEY CLEAN  
ENERGY ALLIANCE*

27 \_\_\_\_\_  
28 <sup>1</sup> County of Yolo, City of Davis and City of Woodland.

1 PIONEER COMMUNITY ENERGY, a California joint powers authority<sup>1</sup> and a  
2 "governmental unit" (as defined in Bankruptcy Code section 101), joins this Statement of Support  
3 and Reservation of Rights.

4 DATED: January 2~~a~~, 2019.

RESPECTFULLY SUBMITTED,

NEUMILLER & BEARDSLEE  
A PROFESSIONAL COPROATION

By: 

CLIFFORD W. STEVENS  
Bankruptcy Counsel

*Attorneys for Creditor,*  
*PIONEER COMMUNITY ENERGY*

27 <sup>1</sup> The governmental units that are members of the Pioneer Community Energy joint powers authority  
28 are Placer County (unincorporated areas), Auburn, Colfax, Lincoln, Loomis, and Rocklin

# EXHIBIT A

1 **EXHIBIT A**

2 CARVEOUT PROTECTIONS FOR CCAs

3 *Following discussion of agreed principles, this language has been proposed to Debtors:*

4 Because PG&E is a utility regulated by the California Public Utilities Commission  
5 (“CPUC”) pursuant to California State law, this Court only intends to approve preemption of those  
6 laws and regulations when it does so expressly, and not by implication by any general order  
7 approving post-petition financing and the documents underlying such financing (“DIP Loan  
8 Documents”) where they conflict with such laws and regulations. The Court also wishes to avoid  
9 PG&E suffering under any inconsistent obligations implied from this Order and any such DIP  
10 Loan Documents, on the one hand, and such applicable laws and regulations, on the other hand.  
11 Therefore, without limiting the generality of those declarations, or limiting the rights or remedies  
12 of the CCAs (as defined below) under applicable law and regulation, and notwithstanding any  
13 other provisions of the DIP Loan Documents or this Order to the contrary:

14 1. PG&E is hereby authorized (a) to perform timely its obligations to the “community  
15 choice aggregators” (“CCAs”) as defined in those applicable California laws and regulations,  
16 including without limitation Assembly Bill 117 (2002) and Senate Bill 790 (2011) and PG&E  
17 Electric Rule 23, including those CCAs appearing in this matter, and (b) to comply timely in  
18 accordance with those laws and regulations, including as implemented in the CPUC required and  
19 approved CCA Service Agreement (PG&E Electric Sample Form No. 79-1029) between each  
20 CCA and PG&E (each a “Service Agreement”) that incorporates and embodies those laws and  
21 regulations with the force of law (collectively, the “CCA Obligations”).

22 2. The Court hereby finds and determines that PG&E is the statutorily- and  
23 regulatorily-mandated pass through conduit and servicer (as described in Bankruptcy Code section  
24 541(d)) of the “CCA Customer Revenue.” For these purposes, “CCA Customer Revenue” shall  
25 mean charges applied by a CCA to its CCA customers, which charges are billed and collected by  
26 PG&E as the exclusive statutory and regulatory billing agent/servicer on behalf of a CCA for  
27 energy provided by a CCA to serve its customers, whether pre- or postpetition, and any funds  
28 collected and held by PG&E on account of such charges, as further described in PG&E Electric



1 Rule No. 23, Section Q, Subsections 1, 3 and 4, such CPUC approved CCA Service Agreements,  
2 and other amounts recoverable from PG&E by any CCA thereunder, consistent with the rights of  
3 each CCA under Section 541(d) of the Bankruptcy Code and applicable non-bankruptcy law and  
4 regulations, including by the force of law Service Agreements implementing those laws and  
5 regulations.

6 3. Therefore, nothing in this Order shall be deemed to suffer or permit the exercise of  
7 any right or remedy of any lender or loan participant under any of the DIP Loan Documents  
8 (separately and collectively, the "DIP Lenders") that would or could directly or indirectly interfere  
9 with, impair or otherwise adversely affect the CCA Obligations and/or the rights of the CCAs  
10 under Section 541(d) of the Bankruptcy Code and applicable non-bankruptcy law and regulations,  
11 including the Service Agreements. Without limiting the generality of the foregoing, the CCA  
12 Customer Revenue shall not constitute part of the DIP Loan Collateral, nor shall it be available to  
13 the DIP Lenders or others, since, among other things, such CCA Customer Revenue pertains to  
14 CCA energy supplied to CCA customers and is "public funds" of such CCA governmental units.

15 4. In particular, under this Order, CCA Customer Revenue shall be carved out and  
16 excluded from:

17 (A) the collateral encumbered by any security interest and/or lien upon property  
18 of the Debtors granted pursuant to Section 364(c)(2), (3) and/or (d) of the Bankruptcy Code  
19 or under any other authority, including the DIP Loan Documents, and

20 (B) any authorization to use cash collateral under Section 363 of the Bankruptcy  
21 Code or otherwise, except that PG&E shall not be prevented from complying with its legal  
22 and regulatory obligations to remit timely the CCA Customer Revenue to the applicable  
23 CCA in the ordinary course of business, consistent with such applicable laws, regulations  
24 and the Service Agreements.

## EXHIBIT B

1 **EXHIBIT B**

2 RESERVATION OF RIGHTS

3 Except as provided above, nothing herein nor in any other appearance, pleading, claim,  
4 proof of claim, suit, motion or any other writing or conduct shall constitute a waiver by SCPA of  
5 any procedural or substantive rights, remedies, claims, or defenses including, without limitation:

6 (a) the right to have all matters, except monetary "damages claims," probation violations, and  
7 criminal complaints, heard and resolved by the California Public Utilities Commission; (b) the  
8 right to have any and all final orders in any and all matters entered only after de novo review by a  
9 United States District Court Judge; (c) the right to have any matter heard and tried before an  
10 Article III court or, in the event of any applicable Chapter 9 case, such other bankruptcy court;  
11 (d) the right to trial by jury in any proceeding as to any and all matters so triable therein, whether  
12 or not the same be designated legal or private rights, or in any case, controversy or proceeding  
13 related hereto, whether or not such jury trial right is pursuant to statute or the United States  
14 Constitution, as well as the rights of State governmental units as such for sovereign immunity or  
15 under applicable laws, including the Fifth and Tenth Amendments; (e) the right to have the  
16 reference of this matter withdrawn by the United States District Court in any matter or proceeding  
17 subject to mandatory or discretionary withdrawal; (f) other rights, claims, actions, remedies,  
18 defenses, setoffs, recoupments or other matters to which SCPA is entitled under any agreements or  
19 at law or in equity or under the United States Constitution, including those protecting public funds  
20 or which may be enforced as police or regulatory powers under Section 362(b)(4) or under 28  
21 U.S.C. § 959; and (g) the right to be served directly with pleadings commencing an adversary  
22 proceeding, contested matter or other proceeding or action.

23 All of the above rights, claims, defenses, and remedies are hereby expressly reserved. The  
24 filing of this Statement and participating in these bankruptcy cases, or any of them, shall not be  
25 deemed to constitute a concession or admission of jurisdiction in the case or cases or before this  
26 court or any other court. SCPA does not consent to the bankruptcy court's jurisdiction or the  
27 jurisdiction of any other court. SCPA does not consent to the entry of final judgments, orders  
28 and/or decrees by the bankruptcy judge/bankruptcy court. At all times, SCPA demands a jury trial.

1     SCPA does not consent to the bankruptcy court/bankruptcy judge conducting any jury trial.  
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**PROOF OF SERVICE**

I am employed in the County of Sacramento; my business address is 555 Capitol Mall, Suite 1500, Sacramento, California 95814. I am over the age of eighteen years and not a party to the foregoing action.

On January 29, 2019, I served the within:

(1) SONOMA CLEAN POWER AUTHORITY'S STATEMENT OF SUPPORT FOR DEBTORS' MOTION FOR POSTPETITION FINANCING AND RESERVATION OF RIGHTS

(2) SONOMA CLEAN POWER AUTHORITY'S STATEMENT OF SUPPORT FOR DEBTORS' PUBLIC PROGRAMS MOTION AND RESERVATION OF RIGHTS

(3) DECLARATION OF GEOFFREY G. SYPHERS IN SUPPORT OF SONOMA CLEAN POWER AUTHORITY'S STATEMENT OF SUPPORT FOR DEBTORS' MOTION FOR POSTPETITION FINANCING AND PUBLIC PROGRAMS MOTION AND RESERVATION OF RIGHTS

☒ (by mail) on all parties in said action by regular, first class United States mail, postage fully pre-paid, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Boutin Jones Inc., mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

☐ (by personal delivery) by personally delivering a true copy thereof to the person(s) and at the address(es) set forth below.

☐ (by overnight delivery) on the following party(ies) in said action by placing a true copy thereof enclosed in a sealed envelope, with delivery fees paid or provided for, in a designated area for outgoing overnight mail, addressed as set forth below. In the ordinary course of business at Boutin Jones Inc., mail placed in that designated area is picked up that same day for delivery the following business day.

☐ (by facsimile) by transmitting a true copy thereof to the persons at the following telecopier numbers and obtaining electronic confirmation that the transmissions have been received.

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***Request for Special Notice***  
Attorneys for ORACLE AMERICA, INC.

**TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**  
Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 1/29/19, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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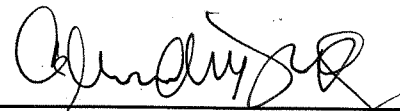


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6 ***[x] See attached mailing matrix for additional parties served by first class mail***

7 I declare under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct.

9 Executed on January 29, 2019, at Sacramento, California.

10   
11 \_\_\_\_\_  
12 CARMELIA V. DOMINGO  
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Label Matrix for local noticing  
0971-3  
Case 19-30088  
Northern District of California  
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Tue Jan 29 13:28:21 PST 2019

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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

- |  |   |   |
|--|---|---|
| (u)Ad Hoc Group of Institutional Bondholders | (u)Ad Hoc Group of Institutional Par Bondhold | (u)BlueMountain Capital Management, LLC       |
| (u)Butte County                              | (u)Calaveras County Water District            | (u)California Independent System Operator     |
| (u)California Public Utilites Commision      | (u)Calpine Corporation                        | (u)City of Clearlake                          |
| (u)City of Napa                              | (u)City of Santa Rosa                         | (u)Federal Monitor                            |
| (u)Garcia and Associates                     | (u)International Brotherhood of Electrical Wo | (u)Lake County                                |
| (u)Mendocino County                          | (u)Napa County                                | (u)Nevada County                              |
| (u)Provencher & Flatt                        | (u)Sonoma County                              | (u)Sonoma County Agricultural Preservation an |

(u)Sonoma County Community Development Commis

(u)Sonoma County Water Agency

(u)Sonoma Valley County Sanitation District

(u)TRC Companies, Inc.

(u)TURN-The Utility Reform Network

(u)Town of Paradise

(u)Valero Refining Company-California

(u)Yuba County

End of Label Matrix	
Mailable recipients	63
Bypassed recipients	29
Total	92